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Lands located on military warrants in certain states.

LANDS LOCATED ON MILITARY WARRANTS IN CERTAIN STATES.

MAY 18, 1878.—Recommitted to the Committee on the Public Lands and ordered to be printed, to accompany bill H. R. 4239.

Mr. THOMAS M. PATTERSON, from the Committee on the Public Lands, by unanimous consent, submitted the following as the

VIEWS OF THE MINORITY

of the committee on the bill of the House (H. R. 4239) "to authorize the Secretary of the Interior to ascertain the amount of land located with military warrants in the States described therein, and for other purposes":

The bill provides for the payment of about $3,885,000 to eighteen of the States, out of the Treasury of the general government. The amount to be paid to each State ranges from $881,239.11 to the State of Iowa to $651.25 to the State of Nevada.

Although if the claim now made is just, it has existed against the government since 1802, and in favor of each of the States named from the date of their admission into the Union. No claim therefor was ever presented to Congress until after 1870, and no formal demand has ever yet been made to any department of the government therefor. The staleness of this claim is sufficient to put the committee on their guard respecting it, and to cause it to examine well its foundation.

Those urging the claim base it upon the obligations of a contract. They say, that for certain considerations yielded by each of the States to the general government upon their admission into the Union (which were, that they would not tax public lands, nor tax private lands for the period of five years, and various other stipulations upon the subject of taxation), the general government, by solemn legislation, agreed to pay 5 per centum upon all lands disposed of by it, whether sold for cash or yielded by it to individuals as bounty or compensation for military services. We contend that no such contract, express or implied, is to be found upon the statute-books.

The first error into which the claimants fall is in supposing that the various States named were, before their admission, in a condition to dictate the terms under which they would enter the Union. We know, from the history of the admitted States, that they each sought the benefits of admission, and appeared before Congress in their Territorial form praying for it; and Congress, in granting their prayer, fixed the terms. It said to all, "If you come in you must not tax the public lands"; to some, "You must not tax private lands for five years after date of entry"; to others, "You must not tax the property of non-residents at a higher rate than that of your own people," &c.

These stipulations were not in the shape of exactions for the benefit

of the general government, except in so far as making the lands of the government non-taxable might be so considered, but were, in fact, exactions for the benefit of the new States themselves, since these exemptions encouraged immigration, investments, and improvements in a much greater ratio than would otherwise have occurred, and was in pursuance of that liberal governmental policy in favor of the pioneer agriculturists, which has conduced more directly than any other cause to the present greatness of these identical States. When, as with some of the States, Congress required that they should not tax lands granted for military services in the war of 1812 for three years, it was a recognition of services rendered by the nation's defenders, which redounded to the honor and benefit of every citizen and State, and was never considered as a burden by any of the States within which these veterans settled. In any event, whatever the nature of the stipulations was, the State was at liberty to accept or reject them; and we must all concede that the benefits of being a State within the Union far outweigh the burden imposed by the stipulations. But the general government did not stop with exactions from the new States; it was liberal with its grants of material aid and support. The generous gift of lands for common schools, for universities, penitentiaries, public buildings, and agricultural colleges bears witness to its liberality. Its benevolent laws of homestead and pre-emption filled their boders with a hardy and virtuous citizenship, which is at once their pride and glory.

Among the bounties received by these States upon their admission was the grant to them of 5 per cent. in money upon the proceeds of the sales of the public lands within them. It is admitted this percentage has been paid upon all lands sold for cash, and in some of the States upon lands contained within Indian reservations, rated at $1.25 per acre, and also upon lands sold for scrip, which the government by law agreed to receive in payment therefor. But the government has not paid any sum upon lands located by means of the military land-warrants issued after the wars of 1812 and with Mexico.

The obligation, if any exists, to pay the percentum upon lands located by these military warrants must be found in the several acts for the admission of these States into the Union.

The 12th section of the act for the admission of Colorado into the Union establishes the obligation, if any exists, and is in substance the same as that under which each of the other States makes the demand. It reads:

> SEC. 14. That five per centum of the proceeds of the sales of the public lands lying within said State, which shall be sold by the United States subsequent to the admission of the said State into the Union, after deducting all of the expenses incident to the same, shall be paid to the said State, &c.

As the claimants must rest upon the statute, it is of the first importance to understand its meaning. Professor Lieber, in his work on legal and political hermeneutics, lays down this sound proposition, "that the very basis of all interpretation is that no sentence or form of words can have more than *one* true sense," so that a statute enacted by the legislature, like the utterances of an individual or of any other body of individuals, in the use of words, does so to convey some certain meaning, and to find their precise meaning is the whole object of interpretation. (Potter's Dwarris on Stats., &c., 47.)

> If words used are so employed that they are capable of two meanings, equally sensible, it amounts to such an absurdity that it is equivalent to having no meaning at all.—*Ibid.*

Two rules of interpretation universally accepted are:

1. It is not permitted to interpret what has no need of interpretation, when an act is expressed in clear and precise terms; when the sense is manifest and leads to nothing absurd there can be no reason not to adopt the sense which it naturally presents.

2. The popular or received import of words furnishes the general rule for the interpretation of statutes. Courts cannot correct supposed errors, omissions, or excesses of the legislature.

There are no words in the section of the Colorado enabling act quoted above that are not clear and precise. Congress could not have used language less liable to uncertainty.

What is it, then, that Congress by that act proposes to give to the States? Five per centum of the *proceeds* of the *sales* of the public lands, which shall be *sold* by the United States after deducting (from the *proceeds*) all of the expenses of sale.

When the above words are construed together, nothing is left to conjecture; a "sale," either in law or in the popular sense in which it is received, has not two meanings. It is defined as "an agreement, by which one of two contracting parties, called the seller, gives a thing and passes the title to it in exchange for a certain price, *in current money*, to the other party, who is called the buyer, who on his part agrees to pay such price." (2 Kent, 263.)

This contract (the courts say) differs from a barter or exchange in this, that in the latter the price or consideration, instead of being paid in money, is paid in goods or merchandise susceptible of a valuation. (3 Salk., 157; 12 N. H., 390; 10 Vt., 457.)

To constitute a sale there must be a price agreed upon, and *this price must consist in a sum of money* which the buyer agrees to pay to the seller; for if paid for in any other way, the contract would be an *exchange or barter, and not a sale.* (Bouvier, title "Sale.")

No other definition of the word "sale" can be found in any of the books. Its meaning is as fixed in law as that of any other word in the English language, and it is as impossible to have a "sale" in law without a money consideration passing to the seller as it is to have a murder committed without life being taken.

Having determined what a sale is, it is evident that the "proceeds" of a sale can only be "money," and it is 5 per cent. of such money, the proceeds received by the government from the sales of public lands, that the States are entitled to receive; and in the absence of other statutes than the one quoted they are entitled to nothing more and to nothing less.

Is there a *sale* of lands by the government where the lands have been taken up by the means of the bounty-warrants in question?

It can hardly be claimed that the grant of lands to soldiers was in the strict sense payment for services. The "pay" consisted of the sum of money fixed by law to be given monthly to the soldier. The lands were given in the nature of a bounty or reward for good conduct, faithful services, and earning an honorable discharge. The provisions of the act of February 11, 1847, fairly shows the considerations upon which these warrants were issued. It reads:

That each non-commissioned officer, private, * * * *enlisted* or to be enlisted in the Regular Army * * * for a period of not less than twelve months, who has served, or may serve, during the present war with Mexico, and who shall receive an honorable discharge, or who shall have been killed or died of wounds received or sickness incurred in the course of such service, shall be entitled to receive a certificate or warrant from the War Department for the quantity of one hundred and sixty acres, and which may be located, &c.

But call this "compensation for services," "land received by the soldier under contract for services," yet it was not a *sale* of land. The

essential element of a sale, money, was lacking. What did the government receive for these lands? Military services alone were the *proceeds* of the transaction. How can the government *pay* to these States five per centum of the proceeds of such lands? When we can cut out from the grand total of military services five per centum to be distributed among the States, then, and not till then, is it possible to transfer any of the proceeds of such lands to the States.

The legal and ordinary meaning of words must be overturned; that which is not money must be transposed into money, and Congress must be held to have solemnly declared that which it did not mean before the interpretation sought for these statutes can be given to them.

In discussing the statutes upon which this claim is based, the distinction is lost between a "sale" and a "contract"; the latter may be a "sale," a "barter," or an "exchange." The illustration by the majority, of one who employs another to work for a given period of time under an agreement to pay him monthly wages at a given price per month and forty acres of land, to be conveyed when the term of service expires, shows this. After the work was performed, the conveyance of the land might be enforced or its value recovered in money. But that is not because there was a "sale" of the land, but because there was a *contract* of barter or exchange for it. The courts would enforce the contract as quickly for the land as for the wages. It is not denied but that the promise to convey lands for military services was a contract which was and should have been carried into effect, but there was no *sale* of such lands, and the government received no proceeds therefor of which it could pay to the States five per cent. These land-warrants did not obligate the government to pay one dollar to the holder; they were part of the machinery by which the soldier or his assigns might obtain the land the government exchanged for his services. Hence, that they were assignable counts nothing. That was for the benefit of the soldier. The government assumed no new liability. Like as in any other contract, the assignee received the benefits.

The claimants, compelled to acknowledge that, under the acts of admission, the government is not liable, seek to hold it under subsequent legislation. No law quoted helps them. The fact that the government authorized conversion of the revolutionary warrants into scrip, and then specifically provided that this scrip should be received in *payment* for lands, cannot alter the plain letter of the statutes, except in so far as Congress expressly authorized the exchange of warrants into that which it would afterward receive as money.

A strict construction of the law might not entitle the States to five per centum of the value of such lands rated at one dollar and twenty-five cents per acre; but because the government, under the peculiar wording of this statute, and which referred to a very small fraction of all the warrants issued, saw fit to deal liberally with the States, is no reason why all the other statutes should be perverted for the benefit of those claiming under them. The one fact, if no other, that the government gave to the holders of land-warrants issued by the commonwealth of Virginia, and under the authority of the Continental Congress, for military services during the Revolution, the right to exchange them for scrip which would be received as money in payment of lands, is evidence that all other bounty warrants were not so considered, but were merely the evidence of the right of the holder to locate the lands which the government had promised to give to soldiers in addition to pay for their honorable services.

But claimants refer to one other act as some evidence of the *intent* of

Congress in the several acts of admission. In 1855 Congress passed an act authorizing and requiring the Commissioner of the General Land Office to state an account between the United States and the State of Alabama, for the purpose of ascertaining what sum or sums of money were due to said State, under the act of March 2, 1819, for its admission into the Union; and by the act he was required to include in said account the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians, within the limits of Alabama, and pay to said State five per centum thereon.

On March 3, 1867, Congress passed a similar act to settle accounts with Mississippi, but provided, in addition to the clause of settlement as found in the Alabama act, as follows:

SEC. 2. That the said commissioner shall also state an account between the United States and each of the other States upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.

The above legislation grew out of a state of facts that had no reference whatever to the claim now presented. The claim, if it exists now, existed then, and yet neither the States interested, nor the Commissioner of the General Land Office, nor Congress, ever claimed or construed it to mean any such thing. The causes which led to it were as follows: Congress had provided in their acts of admission that three per cent. of this five per centum should be expended within the State, for public improvements, under the direction of the State legislatures, and the remaining two per centum upon public roads, canals, &c., leading into and through the States, under the direction of the general government. The States claimed that the general government had never expended this two per cent., and hence that the States should receive it. The government had also, by treaty with the Indians named, granted the fee in the reservations to them, in consideration of the relinquishment of their possessory right in large tracts of country surrendered to the government. Congress, in legislating upon the above facts, concluded to pay this two per cent. to the States, and also five per centum upon these reservations, rated at one dollar and twenty-five cents per acre. This was not an interpretation of old laws; it was a new enactment. It gave to those States *new* and substantial rights, and the language cannot be extended beyond its true import.

The 2d section of the Mississippi act simply applies the text of the first section of that and the Alabama act to the other States. The Commissioner was to state an account with the other States upon the same principles, and this is the language so emphasized by claimants:

And shall allow and pay to each State such amount as shall *thus* be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.

This clause introduces no new factor into the settlements; it simply fixes a price at which the lands should be rated, upon which, by previous legislation, they were entitled to the five per centum. "All lands" cannot mean *all* the public lands within the State, because the government would thereupon be liable to pay to the States not only five per centum upon lands already disposed of, whether by sale or including them in permanent reservations, but also upon all other lands yet belonging to the government. It could only have reference to the lands—the permanent reservations expressly mentioned—which the government had disposed of without fixing a price or making a valuation. The government in substance said, "In addition to five per centum of the proceeds of the sales of lands, I will give you five per centum on all perma-

nent Indian reservations; and in determining the gross sum due you under this agreement, you shall estimate *all* such lands at one dollar and twenty-five cents per acre."

That this is the meaning of the act, the solemn action of the States, their agents, and of Congress have testified.

In construing statutes it is a question to know what the contracting powers have agreed upon in order to determine precisely what has been promised, and how the parties concerned understood the language when the act was prepared and accepted. Apply this rule, and we find that, although millions of acres had been located by land-warrants, neither Congress nor the States understood the language to include them within the five per centum clause.

Hon. Isaac N. Norris, representing the States of Indiana, Illinois, and Ohio, as counsel in seeking for those States the withheld two per centum, in referring to the second section of the Mississippi statutes, says:

> There were no States upon which the second section could operate but Ohio, Indiana, Illinois, and Missouri. Their two per centum, as now pretended by some, had been appropriated to and absorbed in the construction of the Cumberland road. If the section was not designed to apply to them, it was not intended to apply to any States, *for there were none others upon which it could operate.*

Hons. James F. Green and Frank P. Blair, jr., Senators in Congress when an act similar to the Mississippi act was passed for the State of Missouri, under date of January 20, 1864, claimed no wider operation for the law than the disputed two per centum.

The Judiciary Committee of the House, in 1871, gave an interpretation of this law in perfect keeping with the above, and which is so clear that it should set the matter at rest forever. Report No. 40, Forty-first Congress, third session, was made by Hon. M. C. Kerr. The Mississippi statute was referred to the Judiciary Committee for construction, and in rendering their construction the report of the committee thus commences:

> The Committee on the Judiciary, to whom was referred House resolution No. 379, to *construe* a statute therein named, having had the same under consideration, beg leave to submit the following report.

Then follows the discussion of the statute. It shows that no other States than Ohio, Indiana, and Illinois yet remained for the act to operate upon. All the other States had been settled with. If the present claim existed and found support in that law, not one of these eighteen States had been settled with. Was it possible that the Judiciary Committee (even if the States had) could have overlooked an item of $4,000,000 in construing this statute? And yet the conclusion of the report shows that the committee in construing it entirely excluded it.

The report closes as follows:

> The committee, in conclusion, recommend the passage of the following joint resolution as a substitute for the one referred to them:
>
> JOINT RESOLUTION declaring the true construction of a statute.
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> *Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the true intent and meaning of the second section of the act approved March 3, eighteen hundred and fifty-seven, entitled "An act to settle certain accounts between the United States and the State of Mississippi and other States," is that all other States, to wit, Ohio, Indiana, and Illinois, which have not received the full amount of their five per centum of the net proceeds of the sale of public lands lying within their respective limits, as mentioned in their several enabling acts, in money, shall have their accounts stated, both on the public lands and reservations, and such cash balance as has not been paid to said States allowed and paid.

Nor is this all. The construction of this statute has been given by the ablest jurists of the country. Among them are Judge B. R. Curtis, Hon. William M. Evarts, and Hon. Caleb Cushing. Each of these hold,

in distinct terms, that the Mississippi act has reference only to the two per centum withheld from the several States.

With all this concurrent testimony on the one side, and no word or claim until of late years on the other; with Congressional interpretation and the object to be accomplished by all of these laws in direct conflict with the claim, we cannot but regard it as entirely without foundation. The interested States, in their infancy, when they were poor and in need of funds, when every provocation existed to induce their Senators and Representatives in Congress to inveigh against the government officers who would not recognize the claim, and to urge forward such legislation as would secure their pretended rights, never opened their mouths upon the proposition. But now that they are great and wealthy, and represented in Congress by a numerous and able body of men, they put forward a new claim, without law to sanction it, hoping that self-interest will secure for it recognition.

It must be that because prosperity sometimes begets avarice, this new claim is urged at this late day.

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